Final report of the Hearing Officer in Case COMP/37.152 — Plasterboard

(pursuant to Article 15 of Commission Decision 2001/462/EC, ECSC of 23 May 2001 on the terms of reference of Hearing Officers in certain competition proceedings — OJ L 162, 19.6.2001, p. 21)

(2005/C 156/07)

A statement of objections was sent to the following four parties (Gebrüder Knauf Westdeutsche Gipswerke KG, Société Lafarge SA, Etex SA, Gyproc Benelux NV) on 20 April 2001 and to the fifth party (BPB PLC) on 23 April 2001. A two-month deadline had initially been set for the parties to reply to the objections stated by the Commission. In response to a request made by BPB on 2 May 2001, the deadline for BPB was extended by two weeks, to 9 July 2001, on the grounds that access to the file had not been granted sufficiently early and that the deadline set by the Commission was objectively too tight for the firm to be able to prepare its defence. So as to ensure equality of treatment for all the parties, the Hearing Officer, Mr H. Schröter, extended the deadline for all the other parties involved in the proceedings.

A hearing took place on 17 July 2001. Three of the parties, and in particular Lafarge, had explicitly requested that the hearing should be postponed to a later date, but the Hearing Officer, in his reasoned reply of 28 June 2001, refused this request.

At the hearing, some of the parties reiterated their objections to the Hearing Officer's refusal to set a later date for the hearing. Since one of the main management representatives could not attend the hearing, he could not provide any evidence, which, in the view of Lafarge in particular, constituted an infringement of the rights of the defence. On this point, the Hearing Officer gave the absent witness the opportunity of submitting his own comments on the case in writing. Lafarge then cited various infringements of the rights of the defence in its letter of 10 August 2001.

Lafarge claimed that it had not been treated on an equal footing, that it had not been properly heard and that it had not been able to make use of the adversarial procedure. The Hearing Officer replied to these objections. He pointed out that it is up to the firms to present their key witnesses on the specified date. The date of the hearing had been notified two months in advance; if an important witness was absent, this was a personal decision and did not justify postponing the hearing.

The Hearing Officer also requested the parties to submit their observations on the comments made after the hearing by a representative of Lafarge and gave them a deadline for doing so. The rights of the defence were therefore fully complied with at this stage of the proceedings. The parties were able to submit their observations in due time both in writing and at the hearing. The principle of the adversarial procedure was observed, particularly as a hearing did in fact take place.

An exchange of correspondence subsequently took place between the new Hearing Officer and Lafarge. On 7 December 2001 I replied to Lafarge's allegations concerning, on the one hand, the parties' access to the various documents in the file and, on the other, the discriminatory treatment which Lafarge claims to have suffered as compared with the other parties. In my reasoned reply, I reaffirmed that there had been no procedural irregularity. By letter dated 13 February 2002, I once again replied to Lafarge pointing out to it that it could argue its case further in an appeal against the Commission's final decision.

Clearly, there comes a point at which exchanges of letters between the parties' lawyers and the Hearing Officer, whose task it is to ensure that the effective exercise of the right to be heard is respected, serve no further purpose, and any disagreements can then be referred to the Court of First Instance in order to obtain a judicial resolution.

On 27 June 2002 I sent Lafarge the five cassettes of the hearing and allowed them an additional two weeks, subsequently extended by ten working days, to submit any further observations. This was done because Lafarge claimed it had never received the hearing minutes or the recording of the hearing. Examination of the file showed that it had never requested them. Lafarge was granted more time so that it could analyse the tapes more closely. Lafarge thus received all the necessary documents and had the opportunity to make all the observations which it deemed appropriate.

Lafarge also alleged twice in its letters that a new objection had been laid before it by Mr Tradacete, Director, in his letter of 12 June 2002.

The alleged objection consisted in specifying the date on which Lafarge is deemed to have acceded to the agreement, on the basis of the other parties' written replies to the statement of objections. I would point out that paragraph 39 of the statement of objections was relatively imprecise as to the exact date on which Lafarge was deemed to be a party to the agreement, such date being said to be 'after the London meeting', which is the phrase used in BPB's reply to the statement of objections. The Competition DG informed Lafarge that it intended to take mid-1992 as the date of its entry into the cartel and asked for its comments.

Lafarge is therefore wrong in interpreting this exchange of correspondence as meaning that an additional objection had been laid before it.

It is the Commission's consistent practice in antitrust cases to make its information more explicit during the course of the investigation, notably on the basis of the parties' replies to the statement of objections. Narrowing down the date of an agreement does not constitute an additional objection, and the rights of the defence are not infringed where the relevant undertaking is requested to comment on the statements relating to it.

Furthermore, it may be noted that taking mid-1992 as the relevant date is in fact to the firm's advantage as regards the assessment of the duration of the infringement since the date of the meeting referred to in paragraph 38 of the statement of objections was early 1992.

The draft Commission decision does not comprise any additional objections in respect of the undertakings other than those set out in the statement of objections. On the contrary, the finding that an infringement had been committed is dropped in the case of one undertaking.

In the light of the above, I consider that the right of the parties to be heard has been respected in this case.

Brussels, 19 November 2002

Serge DURANDE